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ABSTRACT

This booklet discusses the legal limitations and restrictions governing contracts between school administrators and their employers and offers a ten-item bill of rights designed to ensure a fair measure of job security for administrators. After noting that an administrator has no legal recourse when his employment contract is not renewed, the author examines three possible responses to an attempt to demote or dismiss an administrator who is still under contract. The author argues that the grounds for nonrenewal, dismissal, or demotion of school administrators should be clearly articulated and recommends adoption of his Administrator's Bill of Rights at all levels of the education profession. (JG)

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All members of the American Association of School Administrators receive a copy of this booklet as part of their 1975 membership.

Foreword

The American Association of School Administrators believes that school administrators must be guaranteed reasonable professional and personal rights in order to fulfill competently the vital task of administering the nation's schools.

The AASA Platform requires the Association and its members to work diligently to establish and maintain quality education programs in the schools of America. To do that, the Association believes that, among other things, school administrators must secure "salaries and working conditions commensurate with responsibilities to attract and retain a competent staff."

The 1975 Delegate Assembly adopted the following resolution: "Administrative Dismissal—AASA shall reactivate the National Commission on Administrator Relationships and shall take other appropriate action to guarantee due process and employment rights of school administrators."

And, Goal 4 of the official Goals and Sub-Goals adopted by the AASA Executive Committee states:

> "4. To Attain Professional and Economic Well-Being for Members.
>
> Sub-Goals:
>
> • To protect professional rights and responsibilities. . . ."

In this booklet, AASA Legal Adviser Thomas A. Shannon, Deputy Superintendent, San Diego City Schools, has outlined an Administrator's Bill of Rights. This booklet does not

represent any official policy position of AASA. It does, however, offer a 10-point Bill of Rights covering members of the administrative profession.

AASA believes that the articles enumerated in this Bill of Rights should be put into practice. The achievement of these rights will create for administrators a secure job environment. Only in such an environment can the administrator devise and implement the best possible learning situation for the millions of young citizens attending the schools.

Paul B. Salmon
Executive Director

Preface

In June, 1972, the United States Constitution was incorporated into the employment contractual relationship of teachers and the public educational institutions which employ them. That was the month in which the United States Supreme Court decided the *Roth* and *Sinderman* cases. In those cases, the nation's High Court outlined the circumstances in which the "due process" clause of the Fourteenth Amendment requires that a teacher proposed for dismissal is entitled to some form of notice and hearing prior to dismissal by a public university, *even in states where no teacher tenure statute is in effect.*

The *Roth* and *Sinderman* cases gave rise to an inquiry which persists today: Under what circumstances, if any, is a school administrator entitled to notice and hearing prior to dismissal? In what way, if any, is constitutional "due process" integrated into a school administrator's employment contract? To answer these questions, it is necessary first to examine the unique position of the school administrator and employment relationships with a school district. Then, such position and relationship must be compared to that of a teacher to determine whether there is sufficient similarity to warrant the application of the constitutional principles enunciated in *Roth* and *Sinderman* to a proposed demotion or dismissal of the school administrator.

The unique position of the school administrator in the operation of a school district was perceptively described in a 1975 decision of the California Court of Appeal. The plaintiff was a dean of students in a California high school who was in-

formed that he was being reassigned for the ensuing school year to classroom teaching because, generally, the district superintendent had lost confidence in him and the working relationship between them had deteriorated. The Board of Education afforded the dean a hearing and approved the demotion. The dean sued. In its opinion, the Court of Appeal held that a school administrator

> . . . attains no tenure in his status as such. He serves as an administrator at the pleasure of the appointing power. Nothing in the statutes (of California) . . . limits the authority of the appointing power to remove an administrator for any reason satisfactory to that appointing power . . .

Observing that the Legislature and the courts treat school administrators different from school teachers, the Court said:

> The distinction is not without reason. Certification as a classroom teacher and permanent status as such come after proof of teaching capacity; that status does not call for day-to-day cooperation in a wide variety of administrative decisions, often dealing with novel situations. But a second or third level administrator bears to his superiors a relationship of the most intimate nature, requiring complete trust by the top administrators in the judgment and cooperative nature of the subordinate. The loss of that trust is not a matter susceptible of proof such as involved in the cases where a classroom teacher is dismissed or demoted for objective acts of misconduct. To introduce into the administrative structure the elements of discharge for "cause" and of formal hearing would be to make effective school administration impossible.

The employment relationship between a school administrator and a district is strictly contractual in nature. All the job security a school administrator has is in the employment contract, and the state laws and local school board regulations which are incorporated in the employment contract by reference. Except in isolated cases, there are no statutes, school board regulations or city/county charter provisions granting "tenure" to administrators independent of the employment contract. But, this

does not alter the fact that the United States Constitution applies equally to all persons.

Under the *Roth* and *Sinderman* cases, certain "liberty" and "property" rights held by teachers were identified under the Constitution. The nation's Supreme Court said that

> . . . where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential.

The Court held that where these elements are in dispute in a dismissal or demotion situation,

> . . . due process would accord an opportunity to refute the charge . . .

Moreover, since a dismissal brings a stigma or other disability that forecloses freedom to take advantage of other employment opportunities, the courts will imply a "due process" requirement for a hearing because

> . . . to be deprived not only of present government employment but of future opportunity for it is of no small injury.

And, finally, if a primary or dominant reason for *not* renewing a teacher's contract of employment is based on a real claim which falls within the ambit of the First Amendment "free speech" clause of the United States Constitution, a hearing is required by the "due process" clause of the Fourteenth Amendment.

Thomas A. Shannon

Administrator Dismissal: Three Options

In the areas of a right to maintain a good reputation, a stigma against future employment, and the exercise of "free speech" rights, there would seem to be no rational reason why school administrators should be treated differently from teachers, at least as to the threshold question of whether or not a hearing on dismissal or demotion should be held. In fact, the United States Supreme Court refused to review a federal Circuit Court of Appeals decision which held that a school administrator is constitutionally entitled to notice and impartial hearing on a dismissal based upon allegations affecting "liberty" and "property" rights. The Court said that a school administrator

> . . . is deprived of "liberty" if the state damages his standing in the community by charging him with an unsavory character trait such as dishonesty or immorality. (In this case) Plaintiff's complaint alleges facts showing an attack by defendants (school board members) submitted to justify his dismissal accused him of misrepresentations, supplying false information, and withholding important information. In such a case, due process must provide notice and an opportunity to refute such charges.

The Court also said that plaintiff-superintendent's complaint alleged facts showing a deprivation of "property" because the contract of employment was still in effect at the time of the dismissal.

It is important to note that a clear line must be drawn

between the situation where a school administrator is demoted or dismissed during the operative term of the contract, on the one hand, and where the employment contract is not renewed at the completion of its term, on the other hand.

In the first case, all the principles of contract law apply and the judicial inquiry in a lawsuit brought by the school administrator is directed toward the issue of whether or not there was sufficient evidence to warrant breaking the contract by the school district. The courts will not tolerate breaking of contracts for light, frivolous and non-objective reasons. The burden of proof is on the district and it is a heavy one. When the employment contract runs out, the courts examine the question of whether or not the *original* employment contract, statute, school board regulation or city/county charter provision provides a basis of expectation that the employment contract will be renewed to persuade the court to order the unwilling school board to renew the contract.

It must be emphasized that the right to notice and hearing prior to dismissal, or demotion, is not a job guarantee. Rather, it is a protection against unreasonable, arbitrary and capricious demotion or dismissal. It will not protect against sanctions for incompetency, immorality, uncooperativeness and other valid grounds for terminating an administrator's employment contract. It will only facilitate determining whether or not such grounds actually exist. Also, this right does not mean that the same grounds for demotion or dismissal of a teacher will apply in the case of the school administrator. And, this right to notice and hearing may not exist in all cases at law, notably the non-renewal of employment contract.

Under the present state of the law, a school administrator whose employment contract is not renewed has virtually no recourse. Notwithstanding the emotional proprietary interest in the job or deep feelings of resentment at having been dealt with "unfairly," the administrator is out of a job. The chances of convincing a court to order an unwilling school board to reinstate the administrator are virtually nil.

But, such is not the case when there is an attempt to demote or dismiss a school administrator *during the operative term of the contract of employment*. In that situation, the administra-

tor has three options:

1. Fight to retain the position;
2. Resign and accept a lesser position in the district; and,
3. Resign and leave the district to seek other employment.

1. *Fight to retain the position.* This decision must be made in light of all of the facts, including (a) the impact upon orderly governance and administration of the educational program of the district; (b) the effect a "fight" may have upon one's own health and family; (c) the possibility that rumors, exaggerations of fact and blatant lies may redound to one's long-range detriment; (d) recognition that school administrators historically have not been too successful in winning such disputes; and (e) recognition that even without grounds for dismissal or demotion, one can still be "frozen out" of a job by reassigning duties and responsibilities to others or be "waited out" of a job by simply permitting the term of the employment contract to terminate without renewal.

Of course, this "litany of horribles" doesn't necessarily mean that a school administrator should never "fight" to retain his or her position. It only means the administrator should be completely aware of all of the potential problems which such a decision entails. Only a realistic appraisal of the chances for success and the possible consequences of a "fight" will lead to the right decision in each individual case. Legal counsel is necessary in this appraisal, as is advice from the professional association.

2. *Resign and accept a lesser position in the district.* This option depends to a great extent on the nature of the dispute and whether or not the school administrator could function satisfactorily in the new job in light of the dispute. Generally, a school administrator who has performed unsatisfactorily in a position should be considered for a lesser position *within the district* as a first alternative to outright dismissal, if the school administrator is qualified for a lesser position, the lesser position exists, and the educational program of the district will benefit. If the lesser position is an administrative one, the in-

terests of the district in maintaining its leadership training program and the interests of new administrators and teachers aspiring to be administrators in moving upwards should be balanced against the interests of the demoted administrator who has had a chance and failed, at least in the eyes of current supervisors. The basic test for such consideration is still the administrative trilogy of confidence, cooperation and professional competence.

3. *Resign and leave the district to seek other employment.* A contractual money settlement, measured in terms of the period remaining in the employment contract, should be made. This effort almost always requires the assistance of legal counsel.

Superintendents represent a special class of persons settling employment contract disputes. They cannot rely on professional constraints, or pressures on their superiors, as middle management school administrators may. School board members generally are not members of the school administrator profession and cannot be expected to be as sensitive professionally as a superintendent to dismissing or demoting a co-administrator. Furthermore, the relationship between a superintendent and the school board is so delicate and intimate that without mutual trust and confidence, neither the school board nor the superintendent can perform their function, regardless of who is at "fault" in the dispute. Consequently, when the relationship appears permanently damaged, the superintendent can hope to hang on until a new election of school board members, take a lesser position, or clear out of the district altogether.

Substantially the same factors must be taken into account by the superintendent as in the case of the co-administrator, except that the superintendent usually has a formal, written contract effective for a specific term of years. If the superintendent decides to leave the district at the pressure of the school board, and the contract is still in effect and has not run its course, the superintendent has some bargaining power left to extract him or herself from the position in a way that cushions the impact of the removal upon family and friends so the superintendent should have advice of legal counsel and endeavor to "settle" the dispute by having the school board "buy

out" the contract. A clear understanding must be attained with legal counsel on legal fees prior to the commencement of negotiations. Generally, it is better for the school administrator to enter into an agreement with legal counsel to pay the fee on an hourly-schedule basis rather than on a contingency fee basis. The final decision, however, depends on each particular case.

The only job protection a superintendent has is the contract. Ideally, the best protection of any professional person is professional competence. But, the close relationship of a superintendent and school board is such that an *impression* of competency is sometimes more significant than true competency. That is, the perception of the superintendent's personal and professional qualifications held by a school board may be more significant for a superintendent in losing a position than his or her real worth. In short, the school board, in evaluating the superintendent, *can* be "dead wrong."

Additionally, most superintendents (like school administrators generally) have not been able, in the course of carrying out their enormous professional responsibilities, to build a personal estate. When one considers that to leave a superintendency invariably entails leaving the community, the act of enforcing an employment contract not only amounts to the perfectly valid exercise of an important right but also redounds to a helpful personal benefit to the superintendent and school administrators generally.

There are many ways that an employment contract "buy out" is consummated. In some states, a straight purchase by the school board of the remaining term of the contract is permitted and beyond successful legal challenge. In other states, certain techniques must be applied, such as the supplemental consultant's contract, where the superintendent resigns but is retained for the remainder of the old superintendent's contract term as a consultant under a new consultant's contract.

In negotiating these employment contract settlements, it is important to include all fringe benefits in the discussions. Health and disability plans, retirement contributions, accumulated sick leave days, etc., are valuable items which should not be sloughed. Any settlement contract must be approved in writing by the attorney for the school board and formally ap-

proved by the school board in a public meeting. A jointly developed press release should be given to the media at the time the settlement agreement is approved by the school board in public meeting. No unilateral press releases should be given by the school board. This is extremely important for the long-term professional future of the superintendent.

The state of the law governing the employment relationship of school administrators today dramatically suggests that the development of a Bill of Rights for school administrators is a necessity. The pressures generated by financing schools in inflationary times, realigning the administrative and teaching staffs in a period of declining enrollment, working with increasingly militant and powerful teacher organizations, and serving school boards that necessarily are politically-oriented, combine together *to call dramatically* for such a Bill of Rights lest the profession of school administration be left in the dust.

Administrator's BILL OF RIGHTS

ANY BILL OF RIGHTS for school administrators must contain some provision for fair and reasonable job security, not only during the term of the contract but also at its renewal. In a sense, it *is* a "mini-tenure," if one accepts the concept that tenure, expressed in a simple mathematical formula, equals grounds on which a dismissal or demotion may be based plus some form of hearing to determine whether or not such grounds in fact exist. But, it should be developed in light of the unique position and function of the school administrator. The grounds for demotion, dismissal or non-renewal certainly should be different from those applying to teachers. But they should be articulated in the employment contract. Notice and opportunity for a hearing in a demotion, dismissal or non-renewal of contract form the basic cornerstones of a school administrator's Bill of Rights.

Like the first ten Amendments to the United States Constitution in relation to government as a whole, the school administrator's Bill of Rights should serve to secure better the basic expectations the people of our nation hold for their public schools. Its primary emphasis should be on the improvement of public education. This goal is attained by making the professional leadership of our public schools more qualified through clarifying their rights and correlative responsibilities. While the school administrator's Bill of Rights certainly affects administrators' job security, it also enables school administrators to enhance their professional perform-

ance and thereby improve the educational program of their communities.

The administrator's Bill of Rights is comprised of ten distinct, but sometimes overlapping and interrelated, rights. Their development depends more upon the profession of school administration than the state of present law governing the employment contractual relationship of school administrators and school districts. To make the school administrator's Bill of Rights work, it must be agreed to by all levels of the profession. And, it must be respected by school boards.

1 *The right to a specific and complete written description of the professional duties and responsibilities expected to be fulfilled.*

Any school administrator with any experience in personnel administration will recognize the need for adequate written job descriptions for school employees. Unfortunately, as one goes up the administrative ladder in school districts, the job descriptions become increasingly vague and general. There is a need, in school district administration, to be more specific in articulating job expectations. Appropriate attention also must be paid the inherently intangible aspects of the school administrator's function. This is important if the school administrator's full professional performance is to be judged fairly and adequately.

2 *The right to a full and impartial evaluation of professional performance on a regular and continuing basis.*

Fair and impartial evaluation of all aspects of performance of a school administrator is the key to sound administration. It assists in the identification of leaders on a district-wide basis.

3 *The right to constructive counseling on a regular and continuing basis to upgrade performance.*

This is a follow-up element of good evaluation. Its effect is to improve district administration and boost morale of the school administrative staff. It leads to more job satisfaction and significantly humanizes the entire professional evaluation process.

4 *The right to participate in an administrative staff "in-service" training program to improve professional performance in the present position and establish a basis for increased responsibilities in the future.*

Administrative staff training is one of the top priorities of the superintendent. It is an area that is ideally suited for joint development by district central staff, the local administrators' association and local colleges of education. In these times of declining enrollments and dwindling promotional opportunities, it should emphasize improving the capacity of the school administrator to better perform present jobs so that the fulfillment of continued professional growth, even in the absence of fast promotion, can be highly satisfying. In light of "affirmative action" programs, effective "in-service" training programs has assumed a new importance. But the program must be sufficiently flexible so as not to force a military-like "lock-step" approach to eligibility for promotional opportunities.

5 *The right to be furnished a list of reasons when dismissal, demotion or non-reemployment is proposed.*

This is fundamental to even a rudimentary system of

"due process" for school administrators. It not only serves to inform the school administrator of shortcomings so they can be dealt with rationally, either in the administrator's own defense or as a guide for future self-improvement, but also to bear witness to other members of the administrative staff that the demotion or dismissal action is not being taken for frivolous or arbitrary reasons. It is the only intelligent and even-handed way to deal with fellow professionals in view of the unique and delicate relationship of trust, confidence and co-operation that must exist among an administrative staff to supplement technical competence.

6 The right to a fair, but private hearing before the school board prior to dismissal, demotion or non-reemployment.

The school board is the policy-setting, governing board of a district. It is the employing agency and has ultimate authority to hire and fire. It is only natural that a person whose professional future is at stake should have the opportunity to talk to the ultimate employment authority of the district to "tell his or her side of the story." But, a hearing before the school board should be in accordance with clearly defined procedures to prevent a fair fact-finding and mature decision-making session from being turned into a name-calling brannigan. And, if the school administrator proposed for demotion or dismissal has counsel, the superintendent also should have counsel. Generally, the hearing should be in closed executive session of the school board.

7 The right to a private review by the professional school administrator association of all the facts and judgments resulting in a proposal to demote, dismiss or not to renew employment.

School administrator associations are professional organizations and not "appropriate bargaining units" in the lexicon of labor relations. The emphasis in the professional approach

is service set within a framework that emphasizes professional commonality more than issues that separate the members of the district's management team according to levels of administrative responsibilities. In order to maintain the viability of this approach, each member of the profession must be willing to permit professional actions to be scrutinized by representatives of the profession. The least it will do is provide assurances to a staff that the district leadership is open and confident of its convictions; the most it will do is correct an injustice through advice and counsel from a unique perspective.

8 *The right to adequate compensation for providing the socially important, complex and learned professional services.*

There is a trend, especially noticeable during inflationary times, to reward the lower paid employee in government service through salary increases higher than provided the administrative leadership. This fact, operating together with the historical compression factor of government service characterized by a fairly small gap between the top and bottom points on the salary schedule, works to the detriment of school administrators in our increasingly egalitarian society. While it is doubtful that school administrators can match the rising militancy of teachers in the area of collective negotiations on salary and fringe benefits, they must develop new techniques of working for salary upgrading within the context of the administrative function and relationship to the school board. This new approach must begin with the superintendent whose salary places a practical ceiling on the salaries of the entire administrative staff.

9 *The right to a voice in district administrative policy making consistent with the management position and unique individual experience and expertise.*

This right to a voice in administrative policy making may be provided through the regular reporting relationship of the administrative staff by organizational techniques, such as vice-principals' and principals' councils, administrative advisory committees, and regular communications in staff meetings. It can be done also with the assistance of local administrator associations. While it is vital to obtain all the relevant input possible on administrative issues and subject them to the broadest kind of inquiry, as a practical matter, decisions finally must be made. The problem is to gather the most viewpoints possible without bringing administrative policy making to a turtle's pace or setting up a dual system of administration—one headed by the superintendent and the other headed by the president of the local professional administrators association. It is a delicate balancing, but whatever the method, communication lines among the entire administrative staff must remain open *and used* as a regular and ongoing process while the exclusive, ultimate responsibility *of the superintendent* for administrative decision-making must be preserved without tarnish.

10 *The right to be accorded the respect and dignity due a member of an honorable and learned profession and an individual, sensitive, human being.*

This right seeks to guarantee reasonable treatment of school administrators at all levels by the public and the public's educational trustees, the school board. The superintendent and the school board set the tone at public meetings. When a member of the public attempts to vilify a school administrator at a public school board meeting, the person should be declared out of order. Insulting and upbraiding statements have no place in fact-finding and decision-making.

This is *not* to raise school administrators above criticism or censure, but to guarantee them a form of public "due process" by establishing procedures to channel personal complaints against their performance of assigned responsibilities

in a way that permits workable joining of issues and the right to a fair response. Both of these elements are sloughed when a school board encourages or permits personal villification of school administrators at public school board meetings. A school administrator simply is in no position to trade innuendos or insults with citizens attending school board meetings. The "due process" problems are compounded when the school administrator under attack is either not present at the meeting or received no advance notice to prepare a reasonable defense.

Under the administrator's Bill of Rights, the demotion, dismissal or non-reemployment of administrators would be accomplished in accord with a known and precise procedure. Each party to such an action would proceed in a manner which had the approval of the profession. This would improve school administration and, in an indirect but significant way, redound to the betterment of the educational program of America's public schools.